

# BakerHostetler

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May 14, 2021

### VIA ECF

Honorable Jesse M. Furman  
United States District Court  
Southern District of New York  
40 Centre Street, Room 2202  
New York, NY 10007

Re: *New York City Transit Authority v. Express Scripts, Inc.*, No. 1:19-cv-05196-JMF  
(S.D.N.Y.)

Dear Judge Furman:

On behalf of Plaintiff the New York City Transit Authority (“NYCTA”), we write to explain certain corrected submissions the NYCTA is filing contemporaneously with this letter in connection with its opposition to Express Scripts’ motions for summary judgment and to exclude the NYCTA’s expert. The NYCTA has conferred with Express Scripts, has provided Express Scripts with a redline reflecting all changes, and Express Scripts has no objection to the corrected filings.

The purpose of the filings is to correct errors in the citations contained in the Declaration of Maximillian S. Shifrin in Opposition to Express Scripts’ motions (ECF No. 122) and the NYCTA’s Response to Express Scripts’ Rule 56.1 Statement of Material Facts and Counterstatement of Material Facts (ECF No. 128), as well as to include two exhibits that are quoted and referenced in the NYCTA’s counterstatement but were inadvertently omitted from the filing. There are no substantive changes to either document. Because accurate citations and the inclusion of all referenced documents are essential for both the Court and Express Scripts to navigate the substantial evidentiary record the NYCTA has submitted, we believe the amended filings are necessary and appropriate.

The NYCTA also seeks leave to file one of the omitted exhibits (Shifrin Decl., Ex. 47) as redacted to protect the names of certain individuals implicated in an anonymous fraud tip. *See United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (describing privacy of third persons as a factor that weighs against the presumption of access to judicial documents). The Court has already provisionally granted a similar request made by Express Scripts (ECF No.

118). A highlighted version of the document containing the proposed redactions is being filed contemporaneously herewith.

We regret the errors and apologize to the Court and Express Scripts for any inconvenience.

Respectfully submitted,

*/s/ Maximillian S. Shifrin*

Maximillian S. Shifrin

Partner

The motion to seal is granted temporarily. The Court will assess whether to keep the materials at issue sealed or redacted when deciding the underlying motion. The Clerk of Court is directed to terminate ECF No. 131. SO ORDERED.

A handwritten signature in black ink, appearing to read "J. M. ...", is written over the word "ORDERED".

May 14, 2021